

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ISABELLA EAREGOOD
Claimant

VS.

MIDWEST PETROLEUM, INC.
Respondent

AND

AMERICAN FAMILY INS. CO.
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. **170,520**

ORDER

On the 26th day of April, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of a preliminary hearing order entered by Administrative Law Judge George R. Robertson on March 14, 1994, came on for oral argument by telephone conference.

APPEARANCES

Claimant appeared by her attorney, Kent A. Roth of Great Bend, Kansas. Respondent and insurance carrier appeared by their attorney, David J. Rebein of Dodge City, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Richard L. Friedeman of Great Bend, Kansas. There were no other appearances.

RECORD

The record considered for purposes of this appeal includes transcripts of preliminary hearings and exhibits attached thereto and resulting orders dated March 11, 1994, June 24, 1993, June 3, 1993, December 1, 1992; pretrial conference order dated October 13,

1993; evidentiary deposition of claimant dated March 23, 1993; as well as all pleadings and documents filed of record.

ISSUES

As a result of preliminary hearing held on March 11, 1994, at the request of the claimant, Administrative Law Judge George R. Robertson in a preliminary hearing order dated March 14, 1994, denied the claimant's request for temporary total disability benefits, ordered respondent to pay certain medical mileage and ratified an agreement voluntarily entered into by the parties for the respondent to provide a calcium prescription for the claimant. Claimant files this application for review by the Appeals Board of this preliminary hearing order alleging that the Administrative Law Judge erred in finding that claimant's injuries did not arise out of and in the course of her employment with respondent.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

As is noted above, numerous preliminary hearings have been held and numerous preliminary orders have been rendered prior to this preliminary hearing order.

The claimant makes claim that she sustained multiple injuries to her body arising out of and in the course of her employment with respondent while lifting a syrup box from the floor that weighed approximately 50 pounds. The plastic bag inside the box shifted at that time causing the claimant to fall against some shelves.

The first preliminary hearing order dated December 1, 1992, ordered the respondent to select a treating physician and to pay for claimant's past medical treatment. At that time the claimant was still actively working for the respondent. As a result of preliminary hearing held on June 1, 1993, the claimant requested temporary total disability benefits and extensive medical treatment for multiple injuries including fractured ribs and pelvis. Medical treatment was ordered to be continued with Dr. C. Reiff Brown, an orthopedic surgeon, for treatment of the claimant's low back only. Treatment was specifically denied for the claimant's fractured ribs and pelvis. Temporary total disability benefits were denied. The third preliminary hearing was held on June 24, 1993, which resulted in an order authorizing the claimant to receive medical treatment from Dr. Hugo P. Weber, a metabolic bone disease specialist, in Wichita, Kansas. Temporary total disability benefits were ordered not to exceed eight weeks. The Administrative Law Judge from the October 12, 1993, pretrial conference issued an order granting eight more weeks of temporary total benefits and authorizing Dr. Weber to run any and all tests necessary.

The claimant was diagnosed by Dr. Hugo P. Weber as having osteomalacia, a metabolic bone disease which set the stage for the chronicity of her injury following the work-related accident in June of 1992. The evolution of the claimant's osteomalacia condition is attributed to, among other factors, chronic use of dilantin, a drug used to control claimant's seizures and her previous weight reducing surgery. Recommended treatment is a regimen of vitamin D and calcium supplement.

Claimant argues that the Administrative Law Judge's denial of temporary total benefits at the preliminary hearing was a ruling that the claimant's injury did not arise out of and in the course of her employment with this respondent. This issue, if disputed, is one of the issues set forth in K.S.A. 44-534a(a)(2), as issues which are to be considered jurisdictional and subject to review by the Appeals Board.

Respondent's position is that the Appeals Board lacks jurisdiction to review this order as the Administrative Law Judge did not deny that the claimant's alleged injuries arose out of and in the course of her employment with the respondent. The Preliminary Hearing Order did deny a request for temporary total disability benefits, but granted medical mileage and ratified an agreement for the respondent to furnish further medical benefits.

A review of the previous preliminary hearing orders entered in this matter indicates that this preliminary hearing order is not inconsistent with the previous orders. Medical and/or temporary total benefits were granted in some of the orders and denied in others. From the record, the Appeals Board concludes that denial of temporary total benefits in this case was not based on a finding that the injury did not arise out of and in the course of employment. Accordingly, the Appeals Board does not have jurisdiction pursuant to either K.S.A. 44-534a(a)(2) or K.S.A. 44-551(b)(2)(a) to review the order.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the preliminary hearing order of Administrative Law Judge George R. Robertson dated March 14, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of June, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kent A. Roth, Attorney at Law, PO Box 338, Great Bend, KS 67530
David J. Rebein, Attorney at Law, 208 W. Spruce, Dodge City, KS 67801
Richard L. Friedeman, Attorney at Law, PO Drawer 1110, Great Bend, KS 67530
George R. Robertson, Administrative Law Judge
George Gomez, Workers Compensation Director